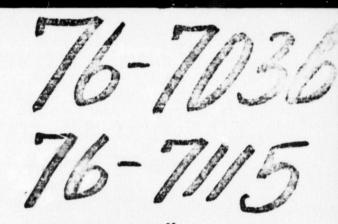
United States Court of Appeals for the Second Circuit



SUPPLEMENTAL APPENDIX

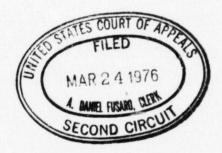


UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT Nos. 76-7036 and 76-7115



ISAAC LORA, etc., et al., on behalf		:
of themselves and all others similarly situated,		:
Plaintiffs-Appellants,	e. •	: 73
- against -		700 m 700 m 700 m 700 m 700 m 700 m
THE BOARD OF EDUCATION OF THE CITY OF NEW		: 5
YORK, et al.,		: -
Defendants-Appellees.	:-	-x :

SUPPLEMENTARY APPENDIX



CHARLES SCHINITSKY, ESQ.
THE LEGAL AID SOCIETY
JUVENILE RIGHTS DIVISION
189 Montague Street
Brooklyn, New York 11201
(212) 858-1300

Attorney for Plaintiffs-Appellants

GENE B. MECHANIC, ESQ.
DEBORAH G. STEINBERG, ESQ.
of Counsel

PAGINATION AS IN ORIGINAL COPY

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RELEVANT DOCKET ENTRIES

1/22/76	Notice of Motion for preliminary injunction filed. Motion ret. 2/9/76	(14)
1/22/76	Memorandum of Law in support of motion filed.	(15)
2/17/76	By BRAUCHHAUSEN, J Order adj. pltff. motion for preliminary injunction to 3/3/76 and that City defts. are to serve responsive papers by 2/25/76 filed.	(16)
2/27/76	Defts. affidavit in opposition to pltffs. Request for a preliminary injunction with memo of law in support filed.	(17/18
3/2/76	Pltff. reply of memo of law in support of class action certification filed.	(19)
3/2/76	Record on appeal sent to C of A Before BRUCHHAUSEN, JPltffs. motion for preliminary inj decision reserved.	
3/5/76	Acknowledgement received from = the C of A for record on appeal.	(20)
3/9/76	By BRUCHHAUSEN, J Order dtd. 3/8/76 denying motion for injunction filed. Further pre-trial status report set for 3/15/76 at 10 A.M.	(21)
3/10/76	Notice of appeal filed. Copy mailed to C of A.	(22)
3/18/76	Pltffs'. reply memo of law in support of preliminary injunction filed.	(23)

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

ISAAC LORA, et al.,

Plaintiffs,

NOTICE OF MOTION FOR PRELIMINARY INJUNCTION

- against -

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

: 75 C 917 (WB)

Defendants.

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Gene B. Mechanic, the affidavits and exhibits annexed thereto and the memorandum of law submitted herewith, plaintiffs will move this Court at Courtroom 3, United States Courthouse, Cadman Plaza, Brooklyn, New York, on the 9th day of February, 1976, at 10:00 o'clock in the forenoon or as soon thereafter as Counsel can be heard, for an order pursuant to Rule 65 of the Federal Rules of Civil Procedure.

(1) preliminarily enjoining defendants from continuing

the placement of plaintiffs in "Special Day Schools for the Socially Maladjusted and Emotionally Disturbed" unless within 10 days from the date of said order defendants provide plaintiffs with the following:

A written notice of the opportunity to challenge

- A. Written notice of the opportunity to challenge at a due process evidentiary hearing their placement in "Special Day Schools for the Socially Maladjusted and Emotionally Disturbed." Such notice shall inform students of the reasons for their placement, their right to counsel at said hearings and their right to prior review of any and all records upon which their placement is based in defendants' possession;
- B. A due process evidentiary hearing, with the right to counsel, the right to confront witnesses and the right to present evidence on behalf of the alleged "socially maladjusted and emotionally disturbed" child. Minutes shall be taken at said hearing.
- c. Written findings upon which any decision to continue the placement of a child in "Special Day Schools for the Socially Maladjusted and Emotionally Disturbed" is based;
- (2) preliminarily requiring defendants to return to

suitable classes in the regular public school system any plaintiff
who, either because of the aforementioned hearing or for any
other reason, is discharged from "Special Day Schools for the
Socially Maladjusted and Emotionally Disturbed";

(3) preliminarily enjoining defendants from searching

- (3) preliminarily enjoining defendants from searching the persons of plaintiffs without probable cause and from requiring plaintiffs to remove all their belongings and to place them with school officials each school morning as a precondition to attending classes;
- (4) and for such other and further relief as to the Court may seem just and proper.

Dated: Brooklyn, New York January , 1976

Yours, etc.,

/S/ Gene B. Mechanic
CHARLES SCHINITSKY, ESQ.
THE LEGAL AID SOCIETY
JUVENILE RIGHTS DIVISION
189 Montague Street
Brooklyn, New York 11201
(212) 858-1300
Attorney for Plaintiffs
Gene B. Mechanic, Esq.
Deborah G. Steinberg, Esq.
of Counsel

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ISAAC LORA, et al.,

Plaintiffs,

- against
THE BOARD OF EDUCATION OF THE CITY
OF NEW YORK, et al.,

Defendants.

:

Defendants.

:

STATE OF NEW YORK)

: SS.:

COUNTY OF KINGS

GENE B. MECHANIC, being duly sworn, deposes and says:

- 1. I am an attorney duly admitted to practice before this Court and am of Counsel to Charles Schinitsky, Esq., The Legal Aid Society, attorney for plaintiffs herein. I submit this affidavit in support of plaintiffs' motion for preliminary injunction.
- 2. This is a civil action authorized by 42 U.S.C. §§ 1981, 1983 and 2000 (d) instituted by seven Black and Hispanic children assigned to public schools under the Board of Education of the

City of New York which are classified as "special day schools" for the "socially maladjusted and emotionally disturbed," otherwise known as "SMED" or "600" schools. Plaintiffs claim that such placement violates their rights under the Eighth, Thirteenth and Fourteenth Amendments to the United States Constitution.

- 3. Upon information and belief, there are presently seventeen SMED schools in New York City, containing a total population of about 3,000 children. The SMED schools are under the centralized authority of the Board's Bureau of Socially Maladjusted and Emotionally Disturbed Children ("SMEDC"). SMEDC is a bureau of the Division of Special Education and Pupil Personnel Services.
- 4. Upon information and belief, the population of the special day schools is almost totally Black and Hispanic. Out of a population of about 3,000 children, 64% are Black, 28% are Hispanic, and only 8% "other." The racial composition of the entire New York City public school system is 36.6% Black, 23.2% Hispanic and 40.2% "other."
- 5. Upon information and belief, the named plaintiffs and the vast majority of children presently in SMED school placement were referred to SMED schools from the regular public school system

under "Special Circular No. 47, 1972-1973," issued by defendant Anker, Chancellor of defendant Board of Education. On December 1, 1975, this circular was superceded by "Special Circular No. 35, 1975-1976." The circulars are annexed hereto as Exhibits "A" and "B".

- 6. Special Circular No. 47 set forth the official criteria for screening and referral of students to "600" schools. First, the child must have a higher intelligence level than the maximum established for "Children with Retarded Mental Development." Second, there must be "[a] history of repeated disruptive and aggressive behavior, extensive in scope and serious in nature, which either endangers the safety of pupils or others, or seriously interferes with learning in the classrcom." Third, the child must have a history of truancy, and, finally, the pupil must have failed "to respond to intensive efforts by the home school to help him."
- 7. Special Circular No. 47 required that preliminary screening be performed by the referring guidance counselor, "or by other appropriatedly trained professional persons designated by the [community or supervising assistant] superintendents. It further stated that the district guidance coordinator and the referring

guidance counselor should assist the defendant Bureau of Child Guidance (BCG) team by assembling all data pertinent to the referral. BCG is the mental health component of the Board. The community school superintendent, or supervising assistant superintendent if a high school student is involved, must approve the counselor's recommendation.

- 8. Following the preliminary screening, Special Circular # 47
 required that the principal and guidance counselor of the SMED
 school to which a child has been referred, interview the child.
 When a referral does not seem appropriate, the Circular mandates
 that the superintendent of the "600" school evaluate all the available data and "work out appropriate steps to be taken."
- 9. Affidavits from the named plaintiffs and their parents demonstrate that children are in placement in SMED schools without having received appropriate due process safeguards. Although Special Circular No. 47 stated that "[a] letter of parental consent should accompany the referral" such consent was most often given as a result of misinformation and coercion. See Affidavits of Carmen Lora, Thelma Moore, Muvinina White, Rita Walters and Melba Martin annexed hereto.

- aware that the referring school was obligated to use less restrictive means to help their children before SMED school placement, nor that they could object to their children's segregation. Moreover, although Special Circular No. 47 suggested Bureau of Child Guidance ("BCG") evaluations prior to SMED school referral, BCG was not consulted under the procedure. Rather, the children were characterized as "socially maladjusted and emotionally disturbed" without a clinical evaluation. During her deposition on October 6, 1975, defendant Paster, Assistant Director of BCG, stated that BCG was not required to conduct a clinical evaluation before a child was referred to a SMED school (p. 54).
- The named plaintiffs have attached affidavits to the instant motion stating that they were never asked to consent to SMED placement and, in fact, have objected to their segregation. See Affidavit of Kelvin Walters, Isaac Lora, Jerome Moore, Francisco Lugo, Lawrence White and Ranjeet Martin annexed hereto. Yet, defendants failed to inform them of their due process rights and provide them with a due process opportunity to be heard.
- 13. Upon information and belief, the grievances of the named

plaintiffs and their parents are typical of those of most other children in SMED school placement. The referral process explicitly established under Special Circular No. 47 clearly raises due process questions. Furthermore, in apparently referring to both Special Circular No. 47, and the superceding procedures, the City defendants have admitted that a due process evidentiary hearing is not a mandated part of the SMED school placement process.

(Answer, paragraphs 50, 58, 64, 74, and 81.)

- in their affidavits that not only was their consent coerced, but school officials paid no attention to their subsequent attempts to remove their children from SMED schools. In fact, one week after plaintiff Walters' mother was forced to consent to SMED school placement for Kelvin, she wrote a letter to the guidance counselor of the SMED school describing her dismay at ther son's treatment by the Board of Education and her unwillingness to have him attend the SMED school. See Exhibit "C" annexed hereto. Even though Kelvin had not even begun to attend school, the letter was ignored. With no other alternative, Mrs. Walters was compelled to send her son to the school.
- 14. The criteria for SMED school referral under the New Circular

are like those of the superceded circular, except that truancy is no longer an enumerated consideration.

- 15. The new special circular, like the one superceded, contains no mandate that the child's consent be obtained. It also contains no provisions to assure that parental consent is given voluntarily and informedly, with other alternatives and the child's rights discussed.
- before referral to SMED schools, the only provision which may eventually affect those placed under old procedures, who comprise the vast majority of the present SMED school population, concerns the condition that students are to receive a semi-annual reevaluations and a reexamination once every three years. See sections 3.8 of Exhibit "B" annexed hereto. Yet, no procedures are mentioned by which a child or his parent may challenge defendants' actions resulting from the reevaluation.
- 17. Moreover, Vera Paster, the Assistant Director of BCG, stated in a deposition taken on October 14, 1975, that parents are not permitted to read psychological or psychiatric BCG evaluations on their child (p. 145-46).

- 18. Affidavits from named plaintiffs annexed hereto further demonstrate that defendants have perpetuated a policy of indiscriminately searching the persons of children as they enter various SMED school buildings or classrooms.
- 19. Defendant Jud Axelbank, principal of a SMED high school, stated during his deposition on November 19, 1975, that as boys enter the school each morning they must place all their "contraband" in a bag which is kept by school officials until the end of the school day. Defendant Axelbank stated that boys who refuse to empty their pockets and be subjected to searches of their persons are not permitted to attend school.

wherefore, based upon the above, the annexed exhibits and affidavits and the memorandum of law submitted herewith, plaintiffs' motion for a preliminary injunction should be granted in all respects.

/S/ Gene B. Mechanic
GENE B. MECHANIC

Sworn to before me this 15th day of January, 1975

/S/ Deborah G. Steinberg

DEBORAH G. STEINBERG
Notary Public, State of New York
No. 24-9171073
Qualified in Kings County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT EASTERN DISTRICT NEW YORK

ISAAC LORA, by his mother and legal guardian, Carmen Lora, et al., on behalf of themselves and all others similarly situated,

: AFFIDAVIT IN SUPPORT OF PRELIMINARY INJUNCTION

Plaintiffs,

-against-

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

STATE OF NEW YORK)
: ss.:
COUNTY OF BRONX)

ISAAC LORA, being duly sworn, deposes and says:

- 1. I am a named plaintiff herein and make this affidavit in support of plaintiff's motion for a preliminary injunction.
- 2. In June, 1973, I was transferred from PS-41 in the Bronx to P-12X, a "600" school also located in the Bronx.
- 3. I was denied the opportunity to inquire into and rebut at a due process evidentiary hearing the reasons for my transfer and the oppropriatiness of the "600" school placement.

4. I never consented to the transfer to P-12X, and my consent was never solicited. In fact, I did not want to be transferred to a "600" school.

5. While at P-12X, I was subjected to daily searches of my person by teachers at the school.

/S/ Isaac Lora ISAAC LORA

Sworn to before me this day of December, 1975

/S/ Ana R. Marin

ANA R. MARIN Notary Public, State of New York No. 03-2531040 Qualified in Bronx County Commission Expires March 30, 1977 STATE OF NEW YORK)

COUNTY OF BRONX)

: SS.:

CARMEN LORA, being duly sworn, deposes and says that:

- 1. I am the mother and legal guardian of Isaac Lora, a plaintiff herein. I make this affidavit in support of plaintiffs' motion for a preliminary injunction.
- My son Isaac began attending PS-41 in December, 1972,
 when he was ten years old.
- 3. On several occasions, Isaac's guidance counselor telephoned me and alleged that Isaac had been involved in fights with

other boys.

- 4. Isaac was not offered adequate guidance or counseling by the school, despite allegations by school personnel that he presented a behavior problem.
- 5. When Isaac was suspended from school for one week in June, 1973, his guidance counselor told me that it would be better for Isaac to go to a "Special Day School."
- 6. The guidance counselor did not explain to me that the "Special Day School" is what is commonly known as a "600" school.
- 7. I was not informed that PS-41 was obligated to make intensive efforts to help Isaac prior to transferring him out of the educational mainstream. I agreed to the transfer without full information. I was never, thereafter, informed as to how I could withdraw my consent or challenge the basis upon which the transfer was made.
- 8. Isaac has been physically struck on many occasions at P-12X. He has received neither proper education instruction nor therapeutic counseling at P-12X.

/S/ Carmen Lora
CARMEN LORA

Sworn to before me this day of December, 1975

/S/ Ana R. Marin

ANA R. MARIN
Notary Public, State of NY
No. 03-2581040
Qualified in Bronx County
Commission expires 3/30/77

UNITED STATES DISTRICT COURT EASTERN DISTRICT NEW YORK

ISAAC LORA, by his mother and legal guardian, Carmen Lora, et al., on behalf of themselves and all others similarly situated,

Plaintiffs,

: AFFIDAVIT IN SUPPORT OF PRELIMINARY INJUNCTION

- against -

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

____X

STATE OF NEW YORK)
: SS.:
COUNTY OF KINGS)

KELVIN WALTERS, being duly sworn, deposes and says:

- 1. I am a named plaintiff herein and make this affidavit in support of plaintiffs' motion for a preliminary injunction.
- 2. I was suspended from Erasmus Hall High School in Brooklyn on May 23, 1974, by the school's principal, Defendant Oxman. When my mother asked to adjourn a suspension hearing, of which she was notified on the day it was to take place, the Board of Education refused to reschedule the hearing, stating to my mother that the the school year was nearly over.

- 3. I was not permitted to attend any school classes for the remainder of the school term.

 4. I began to attend tenth grade in Erasmus in September,
 1974, in accordance with the "yellow card" instructions which my mother received during the summer. However, on the third day of classes, September 11, 1974, Defendant Starr, the dean of boys, told me that I did not belong in school because I had been suspended last year, and sent me home.

 5. Another superintendent's hearing was not scheduled until
 - 5. Another superintendent's hearing was not scheduled until October 3, 1974, 20 days after I was again told to leave Erasmus.
 - 6. On October 10, 1974, Defendant Groisser approved the recommendation of the suspension hearing officer and I be placed in a "600" school. I never had an opportunity to inquire into and rebut that recommendation. I was not examined by the Bureau of Child Guidance.
 - 7. On December 18, 1974, my mother received a letter from Superintendent Groisser stating that I had been accepted for placement at P-91M. I was not given the opportunity at a due process evidentiary hearing to demonstrate that such placement was not appropriate.
 - 8. I never consented to my placement in a "600" school, nor was my consent ever solicited.

9. Upon arrival at P-91M each morning, I am required to empty all my pockets and place all my personal belongings in a bag which is held by school authorities until I leave school at the end of the day. All students at P-91M must do the same.

/S/ Kelvin Walters
KELVIN WALTERS

Sworn to before me this day of December, 1975

/S/ Omar Martinez

OMAR MARTINEZ
Notary Public, State of New York
No. 30-2562150
Qualified in Nassau County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT EASTERN DISTRICT NEW YORK

ISAAC LORA, by his mother and legal guardian, Carmen Lora, et al., on behalf of themselves and all others similarly situated.

: AFFIDAVIT IN SUPPORT OF Plaintiffs, PRELIMINARY INJUNCTION

- against -

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

-----x

STATE OF NEW YORK)
: SS.:
COUNTY OF KINGS)

RITA WALTERS, being duly sworn, deposes and says that:

- 1. I am the mother and natural guardian of Kelvin Walters, a plaintiff herein. I make this affidavit in support of plaintiffs' motion for a preliminary injunction.
- 2. My son Kelvin was suspended from Erasmus Hall High School in Brooklyn on May 23, 1974, by the school's principal, Defendant Oxman. On June 4, 1974, I received a telephone call from Defendant Groisser notifying me that since it was not anticipated that

Kelvin would return to Erasmus, a superintendent's suspension hearing was scheduled for that day.

- 3. I requested that the suspension hearing be adjourned.

 However, the Board of Education refused to reschedule the hearing for that school year, stating to me that the school year was nearly finished. Hence, Kelvin was not allowed to attend any school classes for the remainder of the school term, or approximately another three weeks.
- 4. I received a "yellow card" during the summer of 1974 stating that Kelvin Walters should return to Erasmus in the Fall for his tenth grade class. When September arrived, Kelvin went to Erasmus but on the third day of classes, September 11, Defendant Starr, the dean of boys, told him that he was suspended last year and did not belong in school. He was sent home.
- 5. Another superintendent's hearing was not scheduled until October 3, 1974, 20 school days after Kelvin was again told to leave Erasmus.
- 6. On October 10, 1975, Defendant Groisser approved the recommendation of the suspension hearing officer that Kelvin be placed in a "600" school, even though I did not have the opportunity to require into and rebut the recommendation, and Kelvin had not been examined by the Bureau of Child Guidance. On December

18, 1974, I received a letter from Defendant Groisser stating that Kelvin had been accepted for placement at P-91M. I was not given the opportunity at a due process evidentiary hearing to demonstrate that such placement was not appropriate.

7. Several times I have protested by son's placement in a "600" school and his subjection to the conditions therein. In fact, on December 24, 1975 I wrote a letter to the guidance counselor at P-91M informing him that I did not wish Kelvin to attend P-91M. Even though Kelvin had not yet begun to attend P-91M, my letter was ignored. I was therefore compelled to send my son to that school.

/s/	Rita Walters	
	RITA WALTERS	

Sworn to before me this day of December, 1975

/S/ Omar Martinez

OMAR MARTINEZ
Notary Public, State of New York
No. 30-2562150
Qualified in Nassau County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT EASTERN DISTRICT NEW YORK

ISAAC LORA, by his mother and legal guardian, Carmen Lora, et al., on behalf of themselves and all others similarly situated,

: AFFIDAVIT IN SUPPORT OF PRELIMINARY INJUNCTION

-against-

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

_____ X

STATE OF NEW YORK) : SS.:

COUNTY OF NEW YORK)

FRANCISCO LUGO, being duly sworn, deposes and says:

- 1. I am a named plaintiff herein, and I make this affidavit in support of plaintiffs' motion for a preliminary injunction.
- 2. On December 4, 1974, following a superintendent's suspension hearing, I was transferred from Julia Richman High School in Manhattan to P-82M, a "600" school for boys located in Manhattan.
 - 3. I did not receive any counseling aimed at dealing with

my problems at Julia Richman High School. I did not have an opportunity to inquire into and rebut at a due process evidentiary hearing the appropriateness of my placement in a "600" school.

- 4. I never consented to placement in a "600" school, nor was my consent ever solicited. Rather I was forced by Defendants Ballat and Cohen to choose between returning to a residential home in the Bronx in which he had formerly been in placement, or attending "600" school.
- 5. While at P-82M, my person has been searched by teachers on many occasions.
- 6. In August, 1975, I was transferred to P-58M, another "600" school in Manhattan. This too was without my consent and against my wishes.

/S/ Francisco Lugo FRANCISCO LUGO

Sworn to before me this day of December, 1975

/S/ Ronald Weiss

RONALD WEISS
Notary Public, New York County
Notary # 31-4504775
Expires March 30, 1977

: SS.:

STATE OF NEW YORK)

COUNTY

RANJEET MARTIN, being duly sworn, deposes and says:

- 1. I am a named plaintiff herein, and make this affidavit in support of plaintiffs' motion for a preliminary injunction.
- 2. I was transferred from Newtown High School to P-58M, a "600" school for boys in grades nine through twelve, located in Manhattan in February, 1974.
- 3. At no time was I consulted about this transfer, nor was my consent to such transfer solicited. In fact, I did not consent

to the transfer to P-58M and never wished to attend that school.

- 4. I was denied the opportunity to inquire into and rebut at a due process evidentiary hearing the reasons for my transfer and the appropriateness of "600" school placement.
- 5. When I arrived at P-58M each morning, my person was searched by a teacher.
- 6. I did not receive proper educational instruction or therapeutic counseling at P-58M.

/S/ Ranjeet Martin
RANJEET MARTIN

Sworn to before me this day of January, 1976.

/S/ Gene B. Mechanic

GENE B. MECHANIC Notary Public, State of New York No. 24-4611059 Qualified in Kings County Commission Expires March 30, 1977 UNITED STATES DISTRICT COURT EASTERN DISTRICT NEW YORK

ISAAC LORA, by his mother and legal guardina, Carmen Lora, et al., on behalf of themselves and all others similarly situated,

: AFFIDAVIT IN SUPPORT OF PRELIMINARY INJUNCTION

Plaintiffs,

- against -

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

STATE OF NEW YORK)
: SS.:
COUNTY OF)

MELBA MARTIN, being duly sworn, deposes and says that:

- 1. I am the mother and natural guardian of Ranjeet Martin, a plaintiff herein. I make this affidavit in support of plaintiffs' motion for a preliminary injunction.
- 2. In September, 1973, my son Ranjeet, then aged thirteen, began attending Newtown High School Annex ("Newtown") in Queens.

 In February, 1974, Ranjeet arrived at school late one morning. He was barred from entering the school by Frank Vivona, a school dean,

who kicked him and loudly told him to leave the school. Ranjeet responded to Mr. Vivona angrily, but thereafter went home and returned with me to school.

- 3. When I arrived at Newtown, Mr. Vivona took me into a room without my son. Mr. Vivona told me that unless I consented to Ranjeet's transfer to P-58M, a "600" school for boys in grades nine through twelve located in Manhattan, Ranjeet would be suspended from Newtown. I was not informed that Newtown was obligated to make intenseive efforts to help Ranjeet prior to transferring him out of the regular school system. I signed the consent without full information.
- 4. We were denied the opportunity to inquire into and rebut at a due process evidentiary hearing the reasons for Ranjeet's transfer and the appropriateness of "600" school placement.
- 5. I was never, thereafter, informed as to how I could withdraw my consent. Ranjeet did not receive either proper educational instruction or therapeutic counseling at P-58M.

/S/ Melba Martin
MELBA MARTIN

Sworn to before me this day of January, 1976

/S/ Gene B. Mechanic

GENE B. MECHANIC Notary Public, State of NY No. 24-4611059 Qualified in Kings County Commission Expires 3/30/77 UNITED STATES DISTRICT COURT EASTERN DISTRICT NEW YORK

ISAAC LORA, by his mother and legal guardian, Carmen Lora, et al., on behalf of themselves and all others similarly situated,

: AFFIDAVIT IN SUPPORT OF PRELIMINARY INJUNCTION

Plaintiffs, :

-against-

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

_v

STATE OF NEW YORK)
: SS.:
COUNTY OF QUEENS)

LAWRENCE WHITE, being duly sworn, deposes and says:

- 1. I am a named plaintiff herein and make this affidavit in support of plaintiffs' motion for a preliminary injunction.
- 2. In March, 1973, I was transferred from PS-138 in Queens to P-4Q, a "600" school for boys located in Queens. I never consented to placement at P-4Q, nor was my consent ever solicited.

 In fact I did not wish to be transferred to P-4Q.
 - 3. I was not given the opportunity to inquire into and rebut

allegations that "600" school placement was appropriate.

- 4. I was not examined by a Bureau of Child Guidance psychologist or psychiatrist prior to my transfer.
- 5. In March, 1974, I was transferred to P-75Q, another "600" school for boys in Queens. Once again, I was denied the opportunity to inquire into and rebut the reasonf for such transfer. I was not asked to consent to this placement and I did not consent to it.
- 6. At both P-4Q and P-75Q, I have been subjected to searches of my person by teachers at the schools.

/S/ Lawrence White
LAWRENCE WHITE

Sworn to before me this day of January, 1976

/S/ Esther Kurtz

ESTHER KURTZ Nassau # 7387825 3/30/76 UNITED STATES DISTRICT COURT EASTERN DISTRICT NEW YORK

ISAAC LORA, by his mother and legal guardian, Carmen Lora, et al., on behalf of themselves and all others similarly situated,

AFFIDAVIT IN SUPPORT OF PRELIMINARY INJUNCTION

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

- against -

Defendants.

Plaintiffs,

STATE OF NEW YORK) : ss.:

COUNTY OF QUEENS)

MULVININA WHITE, being duly sworn, deposes and says that:

- 1. I am the mother and legal guardian of Lawrence White, a plaintiff herein. I make this affidavit in support of plaintiffs' motion for a preliminary injunction.
- 2. In March, 1973, when Lawrence was ten years old, he was transferred pursuant to my consent from PS-138 in Queens to P-4Q, a "600" school for boys in grades 5 through 8 located in Queens.

 I was misled by Defendant Robert Klenosky into believing that such

placement would be beneficial for my son. I was not informed that PS-138 was required by Board of Education rules to make intensive efforts to help Lawrence.

3. I was not given the opportunity to inquire into and rebut

- 3. I was not given the opportunity to inquire into and rebut allegations that "600" school placement was appropriate.
- 4. Lawrence was not examined by a BCG psychologist or psychiatrist prior to his transfer.
- 5. Lawrence was transferred to P-75Q, another "600" school for boys in grades 5 through 8 located in Queens, in March, 1974. Once again, we were denied the opportunity to inquire into and rebut the reasons for such transfer.
- 6. Lawrence is not receiving adequate therapeutic counseling or proper educational instruction at P-75Q.

/S/ Mulvinina White
MULVININA WHITE

Sworn to before me this day of January, 1976

/S/ Arthur Riehl Jr.

UNITED STATES DISTRICT COURT EASTERN DISTRICT NEW YORK

ISAAC LORA, by his mother and legal guardian, Carmen Lora, et al., on behalf of themselves and all others similarly situated,

AFFIDAVIT IN SUPPORT OF Plaintiffs, PRELIMINARY INJUNCTION

- against -

THE BOARD OF EDUCATION OF THE CITY : OF NEW YORK, et al.,

Defendants.

STATE OF NEW YORK) : SS.:

COUNTY OF

JEROME MOORE, being duly sworn, deposes and says:

- 1. I am a named plaintiff herein, and make this affidavit in support of plaintiffs' motion for a preliminary injunction.
- 2. I was transferred to P-12X, a "600" school, in or about September, 1972. I never consented to such transfer, and my consent was never solicited. In fact I did not want to be transferred to P-12X.
- 3. I was denied the opportunity to inquire into and rebut at a due process evidentiary hearing the reasons for my transfer and

the appropriateness of "600" school placement.

- 4. I was neither tested nor examined by the Bureau of Child Guidance either prior to or subsequent to my transfer to P-12X.

 I have received no therapeutic counseling or proper educational instruction at P-12X.
- 5. Every morning at P-12X, teachers search me and the other students at the school.

/s/ Jerome Moore
JEROME MOORE

Sworn to before me this day of December, 1975

/S/ Rickey Long

RICKEY LONG
Notary Public, State of New York
No. 03-2397323
Qualified in Bronx County
Commission Expires March 29, 1977

UNITED STATES DISTRICT COURT EASTERN DISTRICT NEW YORK

ISAAC LORA, by his mother and legal : guardian, Carmen Lora, et al., on behalf of themselves and all others : similarly situated,

Plaintiffs,

: AFFIDAVIT IN SUPPORT OF PRELIMINARY INJUNCTION

- against -

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants. :

STATE OF NEW YORK)
: SS.:
COUNTY OF)

THELMA MOORE, being duly sworn, deposes and says that:

- 1. I am the mother and legal guardian of Jerome Moore, a plaintiff herein. I make this affidavit in support of plaintiffs' motion for a preliminary injunction.
- 2. Prior to his transfer to P-12X, a "600" school, in or about September, 1972, my son Jerome attended PS-39, an integrated school located on Longwood Avenue in the Bronx. Although Jerome was involved in several fights while at PS-39, he was never offer-

ed any guidance or counseling services.

- 3. I was pressured by Mr. Hirsch, then principal of PS-39, and by Defendant Dorney to consent to my son's transfer to P-12X. Neither Hirsch nor Dorney informed me that PS-39 was obligated to make intensive efforts to help Jerome prior to transferring him out of the regular school system, but instead misled me to believe that the transfer would be beneficial. Jerome remained in P-12X despite my efforts to have him transferred.
- 4. I was denied the opportunity to inquire into and rebut at a due process evidentiary hearing the reasons for his transfer and the appropriateness of "600" school placement.
- 5. Jerome was not tested or examined by BCG either prior to or subsequent to his transfer to P-12%. Furthermore, Jerome has received no therapeutic counseling or proper educational instruction at P-12%.

/S/ Thelma Moore
THELMA MOORE

Sworn to before me this day of December, 1975

/S/ Rickey Long

RICKEY LONG
Notary Public, State of NY
No. 03-2397323
Qualified in Bronx County
Commission Expires 3/30/77

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
: SS.:
COUNTY OF KINGS)

The undersigned, being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age
and resides at 172 Washington Park, Brooklyn, New York.

That on January 22, 1976, deponent served the annexed Notice of
Motion for Preliminary Injunction on Joseph Bruno, Assistant

Corporation Counsel, at 1656 Municipal Building, New York, New
York and Seth Greenwald, Office of the Attorney General of the
State of New York, at II World Trade Center, New York, New York,
attorneys for Defendants in this action, by depositing a true
copy of same enclosed in a postpaid properly addressed wrapper,
in an official depository under the exclusive care and custody
of the United States Postal Service within the State of New York.

/S/ Deborah Spector
DEBORAH SPECTOR

Sworn to before me this 22nd day of January, 1976

DELZORRA PRESHA
Notary Public, State of New York
No. 41-4502040
Qualified in Queens County
Commission Expires March 30, 1977

Exhibit A is Special Circular No. 47, 1972-1973, entitled "Screening Procedures for Special Day Schools for Socially Maladjusted and Emotionally Disturbed Children." It appears at pp. 96-97 of the Appendix, and is annexed to Appellants principal memorandum of law.

Exhibit B is the new procedure, Special Circular 35, 1975-1976, which supersedes Special Circular No. 47 and is entitled "Screening Procedures for Childrer Who Are Emotionally Handicapped." It appears at pp. 98-102 of the Appendix and is annexed to Appellants' principal memorandum of law.

December 24, 197 Rita Walters 1681 President St Brothlyn 11213 N. 4. Deur Mr Judd. Mr my interview at M91-600 school on 12/19/14, located at 198 Jousethe St I did not like what I saw there, that is not a school, that is a jail that is no class rooms at all, I'am very unhappy. my son Will not letterd on 1/2/15 Therefore Iran asking for an appeal. invertelephone on 12/23/74 to Mr Frank Vivan, he advised me to contact you.
Here is a super of his letter. weig touly yours That you. (hirs) Rita J. Walte UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

ISAAC LORA, by his mother and Legal Guardian, Carmen Lora, et al.,

Plaintiffs,

AFFIDAVIT IN OPPO-

: SITION TO PLAINTIFFS' REQUEST FOR A PRE-

: LIMINARY INJUNCTION

- against -

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

: 75 C 917 (WB)

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK ?

JOSEPH F. BRUNO, being duly sworn, deposes and says:

- 1. I am an attorney in the office of W. BERNARD RICHLAND, Corporation Counsel, City of New York, attorney for city defendants herein.
- 2. This affidavit is submitted in opposition to plaintiffs' motion for preliminary injunctive relief.
- 3. Plaintiffs contend as they have argued often and previously in this lawsuit that the requisites of due process are being kept from the named plaintiffs in this action* and their parents.

^{*} On January 6, 1976, this Court after hearing argument of both sides and receiving submissions of all parties on the merits of class action status, denied plaintiffs' class action motion. Plaintiffs have appealed this Court's order.

- 4. At present there are seventeen (17) Special Day
 Schools for Socially Maladjusted and Emotionally Disturbed
 Children ("SMED" schools)* located in Brooklyn, Queens, Manhattan
 and the Bronx. These schools service approximately 2,950 students
 between the ages of 12 and 21 years. (Answer ¶38).
- 5. Prior to April, 1975, screening, referral and placement of a child in a SMED school was governed by the procedures set forth in the Chancellor's Special Circular #47, dated November 22, 1972 (See, Exhibit A, attached hereto, for a copy of Spec. Cir. #47).
- 6. In April, 1975, the procedures for screening, referral and placement of a child in a SMED school were substantially revised and a new proposed circular was drafted to replace Special Circular #47. The thrust of this new circular is to require clinical certification that every placement in a SMED school was both clinically and educationally sound. This circular

^{*} Plaintiffs persist throughout their affidavits and brief in using a misnomer for these schools. These schools had previously been called "600" schools and were numbered in the 600 series. However, approximately 8 to 9 years ago the 600 numbering of these schools was abandoned and the schools were numbered in the same pattern as regular schools and were called "SMED" schools. Plaintiffs have been so informed of this fact in defendants' answer (Ans. ¶37) and in depositions previously held in this suit.

Procedures For Children Who Are Emotionally Handicapped, dated

December 1, 1975. (See, Exhibit B, attached hereto, for a copy).

- 7. Special Circular #35 provides highly structured procedures whereby the referral to placement process for every new enrollee into a SMED school is reviewed and agreed to at every stage by the educational, clinical and parental authorities. Further, with respect to children placed into a SMED school prior to the effective date of Special Circular #35, e.g., the named plaintiffs in this case, Special Circular #35 provides at subd.

 3.8 that all SMED school students regardless of when placed, are to be clinically evaluated semi-annually to monitor the appropriateness of the SMED school placement. Further, subd. 3.9 of Special Circular #35 provides for re-evaluation of a placement at anytime when it appears that the placement is inappropriate. In all such cases if the placement is found to be inappropriate school program will be determined for the child.
- 8. Plaintiffs dwell at length on the procedures for placement found in former Special Circular #47 and they note the alleged inadequacy of said procedures. (See Affidavit of Gene B. Mechanic, Esq. in support of motion for preliminary injunction).
 - 9. Suffice it to say that Special Circular #47

has been totally superceded by Special Circular #35 which sets forth procedures for clinical placements in SMED schools as well as review of all placement in SMED Schools for appropriateness (See ¶¶10-16 of this affidavit for details).

Special Circular #35

10. The enactment of Special Circular #35 establishes the clear policy and commitment of the City Board of Education to seek out and receive parental consent and clinical evaluation at every stage of a SMED school placement. To this end, it is significant to review certain provisions of this circular.

Clinical Determination Prior to Placement

- 11. At subdivision 1.1 of Special Circular #35 is stated the clear policy that all potential placements in a SMED school or other program for children with emotional difficulties must be made on the basis of "clinical assessment" by the professional staff at the Bureau of Child Guidance.
- 12. At subdivision 1.2 of Special Circular #35 the criteria to be considered by the clinical staff is set forth. These are simply criteria for consideration, but the referral for placement and the placement cannot be effected except by the clinical staff after they have performed a thorough work up on each child.

Parental Consent at Every Stage of the Referral to Placement Process

13. Special Circular #35 recognizes the need and desirability of parental consent at every stage of the referral to placement process. Before a guidance counselor will even recommend that clinical staff at the Bureau of Child Guidance* see a child, consultation with the child's parent is mandated. (Spec. Cir. #35, subd. 1.3).

prior to the commencement of a diagnostic work up by the Bureau of Child Guidance (BCG). (Spec. Cir. #35, subd. 1.4). Prior to a clinical assessment by BCG parental consent must be obtained (Spec. Cir. #35, subd. 1.7) and if placement is deemed advisable by clinical staff at BCG, parental consent is necessary (Spec. Cir. #35, subd. 1.8).

15. If BCG staff determines that placement in a Special Day School for Socially Maladjusted and Emotionally Disturbed

^{*} The Bureau of Child Guidance is a subdivision within the City Board of Education which is responsible for investigating, diagnosing and studying all cases of maladjusted children referred to them by the school system and which issues a diagnosis of possible problems and recommendations for treatment. (By Law 46 of the City Board of Education, attached to the Def. Answer as Exhibit C).

#35 requires the "written permission of the parent" to the transfer of the student to the SMED school. (Spec. Cir. #35, subd.

3.5). If this parental permission is not obtained, the transfer to the SMED school will not occur.

- SMED school or in any other programs for emotionally handicapped children is the concept that school authorities and clinical staff at BCG will recommend a particular placement for a child. While this recommendation will be communicated to the parent and advice will be given to the effect that the recommended placement for the child is best suited to meet that child's needs, on information and belief, there is no coercion practiced by City Board personnel to force any particular placement upon a child or a parent. Indeed Special Circular #35 which requires parental consent at <u>five</u> separate stages of the referral to placement process provides ample opportunity for any parent to halt the process.
- 17. Plaintiffs assert at ¶10 of the Affidavit of Gene
 B. Mechanic that under former Special Circular #47 no BCG involvement was mandated. As noted previously, Special Circular #47 was
 superceded by Special Circular #35 which mandates clinical assess-

ment by BCG of every child to be placed in a SMED school and climical re-evaluation of all children placed prior to the effective date of Special Circular #35.

and child in Special Circular #35 to contest or negate a SMED school referral or placement are extensive and concrete, the City Board through its Division of Special Education has further procedures whereby a parent or child can contest a recommendation for placement in a SMED school or contest the appropriateness of a pre-existing placement.

a process whereby after a child is found by clinical staff to be in need of a special education program due to a handicapping condition, the findings of the evaluation are discussed with the parent in detail. If the parent does not agree at any stage of the identification, evaluation and placement process with any actions or conclusions or recommendations of the city board clinical staff, the parent or child may follow certain existing procedures of appeal and review.

20. These procedures are as follows:

first, the parent or child may request a conference with special education personnel by calling the child Advocate at a published telephone number; the child advocate maintains

a hot line to deal immediately with all types of problems regarding referral to placement of a child in a special education program; this conference will review the records of the child and will attempt to resolve the conflict; If the child advocate or other special education personnel cannot resolve the parent's or child's appeal the next step is:

second, an appeal to the Committee on the Handicapped in the community school district to contest a recommendation for placement or the adequacy of a pre-existing placement; the Committee on the Handicapped will set up a conference with the parent where the records of the child will be reviewed and where the parent with or without a representative may submit information or contest in any way the referral to placement process. If the Committee on the Handicapped does not resolve the issue the next step is:

third, the parent or child may appeal the decision of the Committee on the Handicapped to the Executive Director of the Division of Special Education of the City Board, Dr. Helen Feulner; this process permits the parent and child to review once again the referral to placement process; at this proceeding the child's records are reviewed, the child advocate is brought into the meeting and minutes are taken; the Executive

Director will accept submissions by the parent or her representative and a decision will be made and communicated to the parent; If none of these steps resolves the issue, the parent may appeal any decision in the referral to placement process to the Commissioner of Education, pursuant to Section 310 of the Education Law of the State of New York or the parent can go to the courts, pursuant to Article 78 of the Civil Practice Law and Rules.

- 21. Thus, a parent under Special Circular #35 or under the procedures for appeal or review of a recommendation referral or placement in a special education program, set forth above, has adequate and ample opportunity to reject, review or appeal a determination by the City Board to refer or place a child in a SMED school.
- 22. The present due process procedures are currently under review. Pursuant to 20 USC §1411 et, seq. the State Education Department is mandated to prepare a due process plan in order to continue its receipt of federal Title VI funding for educational programs for the handicapped. (See specifically, 20 USC §1413 (a) (13).
- 23. I am advised by the Office of Counsel to the State
 Education Department that their division of handicapped education
 will be submitting the state plan for due process to the

Commissioner of Health, Education and Welfare (HEW) within a very few weeks. The City Board of Education has already prepared draft due process guidelines which will comply with 20 USC §1413 (a) (13) and which will be implemented in accordance with the state plan once it is approved.

- 24. However, it must be noted that 20 USC §1411 et. seq. does not grant any additional due process rights to plaintiffs. The legislation merely provides the Commissioner of HEW with a tool whereby he can demand certain due process procedures at the state or local level and if there is non-compliance, he can revoke funding.
- 25. Plaintiffs have no standing to raise 20 USC §1411 et seq. in this case. It does not and is not intended to grant to plaintiffs any direct cause of action.
- 26. The review and consent procedures contained in Special Circular #35 and the appeal procedure, set forth herein, provide adequate due process protection to the plaintiff children in this case. (See Memorandum of Law, submitted herewith, Point I for a full discussion of this issue).
- 27. The consent of the parent or legal guardian of a child to the placement of that child in a SMED school is sufficient authorization under law to permit said placement. (See

Memorandum of Law, submitted herewith, Point I).

SMED school to solicit and receive the consent of the child prior to that child's placement. In fact, Special Circular #35 at subd.

3.6 calls for an interview and orientation of the parent and child on the day scheduled for admission. It is and has been the procedure in SMED schools that a parent and child prior to admission to the school are permitted to observe classes in session, to discuss the school with students in attendance and to confer with their friends and relatives with respect to permitting the child to attend the SMED school. If either the child or the parent does not agree on the SMED school placement, the principal of the SMED school will not accept the child and will refer the child back to the sending school or district for alternative action. (Def. Ans. §36).

Access to Clinical Records

- 29. Plaintiffs argue that the policy of the Bureau of Child Guidance (BCG) of the City Board of Education that does not permit unrestricted access to its raw psychiatric and psychological data and records by parents denies them due process.
- 30. With respect to this issue, it is BCG policy that direct access to the clinical records of a child referred to a SMED school is granted to parents through and under the review

and supervision of the child's physician or clinician. This policy is in accord with the law in this Circuit and does not in any respects violate due process requirements.

- 31. Further, the rationale for such a policy lies in substantial considerations of confidentiality and the promotion of continued professionalism in preparing their files. It is a deep concern of defendants that <u>unbridled</u> access to BCG clinical records could cause undue harm to the child, the parent or others for several reasons:
 - medical records ordinarily include information stated in technical terms which might be misunderstood and misconstrued by an individual parent who is not medically trained,
 - the revelation of some information in the child's record could be detrimental to that individual's child's well being;
 - information in a child's record often includes references and conclusion with respect to other persons (parents, friends, relatives, etc.) which if known could harm the rights of their individuals and which might cause a general reluctance to be open with clinical staff which is attempting to diagnose a particular child's problem.
- 32. This issue of unrestricted access was before this Court previously and is an issue upon which this Court has ruled

and upheld the defendant's right to restrict access to the records of the named plaintiffs by requiring that the child's physician receive the records in the first instance and that that physician supervise their release to the parent and child. (See January 6, 1976 decision of this Court in this case, p. 7 and Affidavit of Joseph F. Bruno, dated the 28th day of November, 1975, previously submitted in opposition to plaintiffs' Notice to Produce, dated November 14, 1975).

- vised review of a child's raw clinical material by the parent is, in all respects, in accord with and supportive of the due process rights of the children, parents and other individuals.*

 Preliminary Injunction Tests
- 34. In order to establish a right to a preliminary injunction plaintiffs must meet at least one of the tests set forth by the courts for granting such relief:

^{*} It should be noted that it is the policy of BCG that a parent will receive, on request, a summary of the findings and diagnosis of the BCG clinical staff and instructions that the raw data will be given to a parent through physician or clinician. Further, the City Board has published a pamphlet entitled Requirements Governing the Collection, Maintenance and Documentation of Student Records which spells out the right of access to student's records. (See Exhibit C).

1) plaintiff must show a likelihood or probability on the merits and the possibility of irreparable injury

or

2) plaintiff must show that they have raised serious questions going to the merits and the balance the hardships tips sharply in its favor.

Likelihood of Succsss on the Merits

35. With respect to the measure of due process required for contesting the identification, evaluation, referral or placement of a child in a SMED school, the provisions of Special Circular #35, and the appeals procedure described herein coupled with the right of the educational authority in consultation with clinical staff to make a determination and selection of the most appropriate educational program for a particular child, all provide to plaintiffs all the process which is due under law. The Court is respectfully referred to the city defendants' memorandum of law, Point I, A(i), pp. 16-33 for a more complete discussion of this issue which is specifically incorporated herein

and made a part hereof.

36. With respect to the issue of alleged search and seizure at the SMED schools, the city board has clearly stated that no such policy exists or would be tolerated.

37. Even assuming arguendo that an improper search of a student did occur at a SMED school, unless a pattern of practice.

- a student did occur at a SMED school, unless a pattern of practice could be established said incident could not form the basis of preliminary injunctive relief. The Court is respectfully referred to city defendants' memorandum of law, Point I, A(ii), pp. 33-39 for a complete discussion on this issue and which is incorporated by reference herein and made a part hereof.
- 38. Thus, on the issues of due process and search and seizure raised by plaintiffs, they have failed to establish a likelihood or probability of success on the merits.

 Irreparable Injury
- 39. With respect to the issue of irreparable injury to plaintiffs if the injunctive relief is not granted, it is defendants' position that if preliminary injunctive relief is granted, it will do serious damage to the children involved and may cause serious harm to the city school system.
- 40. A full due process hearing of the type sought by plaintiffs is not mandated on the facts, the case law or any

statute referred to by plaintiffs. The Court is respectfully referred to city defendants' memorandum of law, Point I, (B) pp. 39-44, for a more complete discussion of this issue and which is specifically incorporated herein and made a part hereof.

Balancing the Hardships

- basis of facts and law presented herein would produce chaos in the city school system. It would establish a precedent for any child who is now in a special education program to demand the type hearing which plaintiffs seek in which to contest their identification, referral or placement in a program. Considering the large number of children now in special education programs (40,000 children) and the strong case law upholding the right of the educators to select, with proper safeguards the proper educational program for a child, the harm of injunctive relief.
- Months from the institution of this suit in bringing this motion for this extraordinary relief and the fact that such relief would totally disrupt the orderly status quo militates against a grant of such relief. The Court is respectfully referred to city defendants' memorandum of law, Point I (C), pp. 44-46, which is incorporated by reference herein and made a part hereof.
 - 43. In addition, the plaintiffs' demand for relief

in this case is in the nature of a mandatory injunction which the courts are reluctant to grant. The Court is respectfully referred to city defendants' memorandum of law, Point II, pp. 47-48 which is specifically incorporated herein and made a part. hereof.

44. With respect to the allegations contained in the affidavits of the parents and individual children, the city defendants have responded and countered all of the issues raised therein either in their answer or in the papers submitted herewith. Frankly, it is the city defendants' position that the affidavits of the named children add little to the efficacy of this sult and may cause more harm to the child's emotional development than anticipated benefit to this suit.

WHEREFORE, city defendants pray that this motion be denied in all respects and this court grant what other and further relief which it may deem proper.

/S/ Joseph F. Bruno
JOSEPH F. BRUNO
ASSISTANT CORPORATION COUNSEL

Sworn to before me this
20th day of February, 1976
Doren Gopstein /S/ Doran Gopstein
Notary Public State of New York
No. 31-6596675
Qualified in New York County
Commissioner Expires March 30, 1976

Exhibit A is Special Circular No. 47, 1972-1973, entitled "Screening Procedures for Special Day Schools for Socially Maladjusted and Emotionally Disturbed Children." It appears at pp. 96-97 of the Appendix, and is annexed to Appellants principal memorandum of law.

Exhibit B is the new procedure, Special Circular 35, 1975-1976, which supersedes Special Circular No. 47 and is entitled "Screening Procedures for Children Who Are Emotionally Handicapped." It appears at pp. 98-102 of the Appendix and is annexed to Appellants' principal memorandum of law.

Regulations
Governing
the
Collection,
Maintenance
and
Dissemination
of
Student Records



BOARD OF EDUCATION CITY OF NEW YORK

Exhlut'c"

These regulations were issued by the Chancellor on March 27, 1973 as Special Circular 103, 1972-73. These regulations supersede those issued in Special Circular 63, 1961-62, and Special Circular 22, 1970-71. These regulations take effect immediately and apply city-wide.

Background

- A The schools collect and maintain student records to provide for the growth and development of individual students, to provide information to parents and authorized staff, and to provide a basis for the evaluation and improvement of school programs.
- B. It is the responsibility of each school to preserve the rights to privacy of students and parents.
- C. These regulations are based on law as well as city-wide policies adopted by the central Board of Education on January 17, 1973. In addition, they reflect the recommendations of the Chancellor's Committee on Student Records and Confidentiality.

Administrative Responsibility for Student Records

- A. The principal or head of the office or program concerned shall be the custodian of all permanent records. He shall be responsible, directly, and through his Supervising Assistant Superintendent or Community Superintendent and Community School Board, for the observance of law, policy, regulations and directives in the collection of information for student records, their maintenance and protection, the proper dissemination of information contained therein, and the forwarding of records for official purposes to higher authority when see directed.
- B. The principal or head of office concerned shall make maximum provision for protection of rec-

- ords from review by unauthorized school and non-school personnel, and for maximum physical security of such records
- C. The principal or head of office concerned shall ensure that school staff under his or her jurisdiction receive periodic instruction and training regarding the privacy rights of students and parents, and the confidential handling of student records.

Types of Records

A. Permanent Records

- The form of all permanent records maintained in schools and in other offices of the City School District shall be approved by the Chancellor, and shall be available for public inspection in the Professional Library at central headquarters. 110 Livingston Street, Brooklyn The forms shall also be made available for public inspection by the principal of each school.
- 2. Approved permanent records are:
 - The Cumulative Record Personal and Educational Data (elementary schools)
 - The Cumulative Record Test Data (elementary schools)
 - c. The Secondary School Pupil Permanent Record Card
 - d. The Cumulative Health Record
 - e Attendance Roll Book
- The school may record on the permanent record a listing of honors and awards and entries as to participation in school and extra-

curricular activities. The permanent record also may list official disciplinary action taken against the student, however, any such entry shall be expunged from the record where an appeal from such action results in an order to expunge the record. The permanent record may not be used to record out-of-school incidents or activities of the student or his family.

B. Guidance Folders

- Guidance records and notes maintained by guidance personnel are temporary, not permanent, records
- These guidance folders shall be kept separate and apart from the student's permanent records.
- All such folders shall be screened and reviewed at least twice each year by guidance personnel for the removal of irrelevant and extraneous material.

C. School Medical Reports

School Medical Reports (Form 103S), kept in the medical room of each school, are the property of the Department of Health and are medically confidential. Such records, and access to them, are subject to regulations established by the Department of Health.

D. Bureau of Child Guidance Records

Records collected and maintained by the Bureau of Child Guidance are sometimes forwarded to the principal of a school. It is the responsibility of the principal to determine which members of the professional staff shall have access to such reports for the purpose of providing the indicated educational services needed by the student Access to such records shall be restricted to the minimum number of persons possible

Transfer of Records and Disposition of Obsolete Records

- A. When a student moves from one public school to another public school within the City School System, the permanent records shall be forwarded to the new school in accordance with regulations issued periodically (Sée, for example, Special Circular 79, 1972-73)
- B. Guidance records shall be transferred in accordance with current regulations. Before transfer of such records, the guidance counselor shall review the contents of such folders and records, and remove extraneous and outdated materials, and temporary notes.
- C. Regulations governing the disposal of obsolete records are provided in General Circular 25, 1963-64
- D Bureau of Child Guidance records held by the school shall be transferred from school to school only with the written authorization of the Bureau of Child Guidance or higher authority.
- E. The parent's authorization is necessary to transfer records to schools other than those in the New York City public school system. When school authorities other than those in the New York City public school system state that a parent has registered a child with them, this shall constitute sufficient authorization for transfer of appropriate permanent records in accordance with current regulations.

Access to Student Records

A. Basic Principles

Community Boards, Community and Assistant Superintendents, heads of central units, principals and other staff shall be guided by these basic principles:

- The parent has the right to see all his child's school records, both permanent and temporary. The parent is entitled to see such records, and not merely to have items selected and read by school officials
- 2. In keeping with the individual's right to privacy, no part of a student's record may be divulged to any person, organization or agency in any manner not covered by these or subsequent regulations unless:
 - There is written consent of the parent or legal guardian.
 - b. There is a valid court order for such information. (In such cases, the principal shall notify the parent immediately in writing of the information which has been subpoenaed.)
 - c. There is a directive from the Office of the Chancellor for such information to be made available.
- 3. Doubt in the mind of the principal as to the propriety of disclosing information from a student's record is sufficient justification for withholding or denying information until the doubt is dispelled or proper authority is shown Questions concerning the security and accessibility of student records should be addressed to the Law Secretary. New York City

Board of Education, 110 Livingston Street, Brooklyn, New York 11201.

- B. Access to Records by Parents, Legal Guardians and Students
 - All information that is made a part of the permanent record of a student shall be made available at regular intervals and upon request for examination by the parent.
 - 2. As in the case of permanent records, temporary records, such as guidance folders, progress reports, grades, teacher notes, and medical records (other than School Medical Reports which are the property of the Department of Health), psychological and psychiatric reports, and Bureau of Child Guidance records held by the school shall be made available for examination by the parent at regular intervals and upon request.
 - 3. When a parent requests to see his child's records, the parent shall be accorded an expeditious opportunity to do so, and to reproduce or make notes regarding any such material. The principal shall arange for a member of the professional staff to assist the parent in interpreting the records. Records may not be removed from the school by the parent.
 - 4. In the case of children of estianged, separated or divorced parents, principals shall communicate solely with the parent or guardian with whom the child resides and who is, therefore, responsible for the attendance of the child in school.
 - The above-described rights of parents for access to student records shall apply equally in the case of students 18 years old and older, and in the case of high school graduates of any age.
 - a. High school students under 18 years of

age have the right to see their permanent records upon request

b High school students under 18 years of age may see their guidance, medical and psychological records only with the permission and in the presence of the parent.

C. Access to Records by School Staff

Within the parameters of confidentiality set forth in these regulations, principals and heads of offices shall restrict access to student records to those members of the professional and administrative staff whose duties and responsibilities require such access. This applies to all permanent and temporary records, including guidance records, medical and psychological records, and Bureau of Child Guidance records held by the school.

- D. Release of Information to Persons, Organizations or Agencies other than Parents, Legal Guardians, Students or School Staff
 - 1. Except with the informed written consent of the parent, no information concerning the student may be released to non-school agencies or individuals, including employers, colleges or universities, sponsors of scholarship or aid programs. City. State or Federal agencies, the courts, labor unions, fraternal organizations, probation or welfare departments, lawyers, doctors, etc., except as required by law or current regulations.
 - a. Schools may use standard consent forms, signed by the parent, granting permission to the school to provide pertinent records to colleges and employers. Such consent forms shall be valid only while the student is registered in the school.
 - b In the case of students 18 years old and clder, or high school graduates of any

age, the written consent of the student or graduate shall be sufficient authorization for the release of such information

- 2. The written consent of the parent for release of information to non-school agencies or individuals is not adjusted where the principal determines that an emergency exists in which the welfare of the student requires the release of information before such consent can be obtained.
- 3 Schools shall provide information requested by the Comptroller or Corporation Counsel of the City of New York or the Legal Department of the Board of Education in connection with the investigation or defense of a claim or suit filed against the Board of Education
- 4. Nothing contained in these regulations shall be deemed to restrict the authority of the Chancellor or his designee to direct or restrict the release of information to law enforcement authorities in appropriate circumstances.

Derogatory or Inaccurate Entries in Student Records

- A Any entry in the student's record which is derogatory to the student shall be reduced to writing and entered in the record within five school days following the date on which the incident leading to the entry became known to school authorities. After these five days, no such entry may be added to the student's records.
- B The student and parent have the right to answer or explain in writing any derogatory material entered in any of the student's records including guidance records and such written answer shall be included in the record by the principal
- C. Within fifteen days following entry of derogatory information in the student's record, the principal shall notify the parent in writing that such an

entry has been made, and inform the parent of his or her right to see the record and answer the entry.

- D. In addition to the right to file a written answer to derogatory material, the parent shall have the right to appeal derogatory or inaccurate entries in his or her child's record. Derogatory or inaccurate information shall be expunged from the record by the principal or higher authority when the parent's claim of unfairness or inaccuracy is sustained. Appeals shall be made in the following manner.
 - The parent may confer with the principal. The principal may modify or expunge the entry from the student's record where such action is warranted.
 - The parent may appeal in writing to the principal. The principal shall rule on such written appeal, in writing, within fifteen working days following receipt of the appeal from the parent.
 - 3. The parent may appeal the ruling of the principal, in writing, to the Community Superintendent or, in the case of centrally operated schools, to the appropriate supervising Assistant Superintendent. The Community Superintendent or Assistant Superintendent shall rule on such an appeal, in writing, within fifteen working days following receipt of the appeal from the parent.
 - 4. In the case of schools under the jurisdiction of a Community School Board, the parent may appeal the ruling of the Community Superintendent, in writing, to the Community School Board, and if still aggrieved, thence to the Chancellor Such appeals shall be decided, in writing, within fifteen working days following receipt of the appeal from the parent
 - In the case of centrally operated schools, the parent may appeal the ruling of the

- supervising Assistant Superintendent, in writing, to the Chancellor, who will rule on such an appeal within fifteen working days following receipt of the appeal from the parent.
- The parent is entitled to see the information used by the reviewing authority in deciding the appeal
- Decisions of the Chancellor may be appealed to the central Board of Education and or the State Commissioner of Education in accordance with law, policy and established regulations.

Collection and Use of Information and Data Concerning Students or Their Families

- A. Information and data concerning students or their families collected by schools for the planning, operation and evaluation of school and schoolrelated programs shall not identify individual students or families unless the school obtains the informed written consent of the parents involved before the collection of such information.
- B. Schools shall collect and supply data and information to governmental agencies as is required or authorized by law.

CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK

Board of Education

Se, nour P. Lachman, President

> James F. Regan, Vice-President

Joseph G. Barkan Joseph Monserrat Isaiah E. Robinson

Irving Anker.
Chancellor

Harold Siegel.

For additional copies, write:

Office of Public Affairs 110 Livingston Street. Ecocki,n, New York 11201 Telephone (212) 596-4190 UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

ISAAC LORA, by his Mother and Legal Guardian, Carmen Lora, et al.,

Plaintiffs,

-against-

No. 75 C 917

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

March 8, 1976

Defendants.

Appearances:

CHARLES SCHINITSKY, ESQ. The Legal Aid Society Attorney for Plaintiffs

GENE B. MECHANIC, ESQ.
DEBORAH G. STEINBERG, ESQ.
Of Counsel

W. BERNARD RICHLAND, ESQ. Corporation Counsel Attorney for Defendants

JOSEPH F. BRUNO, ESQ. Of Counsel

BRUCHHAUSEN, D. J.

The plaintiffs move for an order, pursuant to

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Rule 65 of the Federal Rules of Civil Procedure, enjoining the defendants from certain of their actions, and
seeking certain evidentiary hearings, as set forth in the
Notice of Motion.

This court in a prior opinion and order, dated January 6, 1976, denying class action status, briefly indicated the nature of this suit. It is, therefore, unnecessary to reiterate the facts, save, that this is a suit charging violations of the civil rights of the named plaintiffs.

The general purpose of a preliminary injunction is to preserve the status quo pending final determination of the action after a full hearing. Checker Motors Corp. v. Chrysler Corp., (Cir. 2, 1969), 405 F.2d 319, cert. denied, 394 U.S. 999. The court in the exercise of its discretion must be satisfied there is a clear showing of probable success and possible irreparable injury. Clairol Inc. v. Gillette Co., 389 F.2d 264. Also, the movant is in substantial need of protection, and that the damage to him in the absence of an injunction outweighs the foreseeable harm to the defendants.

In Moore's Federal Practice, Vol. 7, Second Edition, the rule is well settled in part at pgs. 65-44, 65-45:

"Thus the trial court should exercise its discretion in such manner as to safeguard the interests of both parties and it may be improvident for it to grant a preliminary injunction which permits the plaintiff to obtain an undue advantage by acting while the hands of his adversary are tied by the writ, or where the preliminary injunction gives the plaintiff essentially all the actual advantages which could be obtained from a final adjudication.

In the case at bar, the movants have failed to establish that they are entitled to this drastic relief now sought. On the contrary, the granting of this relief would cause chaos and irreparable harm throughout the entire educational system by requiring full adversary hearings, and would irreparably damage the functioning of the special educational program for the handicapped children.

The court has fully considered the motion, arguments, affidavits and applicable law, and must conclude that the motion be in all respects denied.

It is so ordered.

A further pre-trial status report is hereby scheduled for March 15, 1976 at 10 A.M.

Copies hereof will be forwarded to the attorneys for the parties.

Senior U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FICT 10

MARCH 10

1916

ENN. Y.

ISAAC LORA, et al.,

plaintiffs,

-against-

NOTICE OF APPEAL

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

75 C 917 (WB)

Defendants.

SIRS:

Notice is hereby given that Isaac Lora, Kelvin Walters, Ranjeet Martin, Jerome Moore, Lawrence White, Francisco Lugo and Melvin Prince, plaintiffs in the above-captioned matter hereby appeal to the United States Court of Appeals for the Second Circuit from the order entered in this action on March 8, 1976, denying plaintiffs' motion for a preliminary injunction.

CHARLES SCHINITSKY, ESQ.
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JUVENILE RIGHTS DIVISION
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Deborah G. Steinberg, Esq.,
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